



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 29, 1993

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR93-345

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19796.

The Texas Department of Criminal Justice (the "department") has received a request for information relating to a certain administrative hearing involving a department employee. Specifically, the requestor seeks a closed internal affairs investigation report of which he was the subject. You advise us that you do not object to release of some of the requested information. You claim that some of the requested information, however, may be withheld under sections 3(a)(7) and 3(a)(8) of the Open Records Act.¹

Section 3(a)(7) excepts from required public disclosure:

matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited from disclosure, or which by order of a court are prohibited from disclosure. [Footnote omitted.]

¹You advise us that certain information, including reports of polygraph examinations, employee social security numbers, and information about other employees subject to the investigation, will not be made available to the requestor because you believe it is either made confidential by law or is not within the scope of the request. You do not seek a determination under section 7 of the Open Records Act with respect to this information. Accordingly, we do not address its availability under the Open Records Act.

V.T.C.S. art. 6252-17a, § 3(a)(7). In Open Records Decision No. 574 (1990), this office held that section 3(a)(7) protected information that revealed client confidences to an attorney or that revealed the attorney's legal advice. We have examined the information for which you seek protection under the attorney-client privilege and conclude that it may be withheld from required public disclosure under section 3(a)(7) of the Open Records Act.

Section 3(a)(8) excepts:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Even if a matter is closed, the names of witnesses may be withheld under certain circumstances. Open Records Decision No. 397 (1983) at 2. The names of those persons and their statements may be withheld if it is determined:

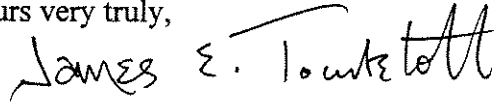
from an examination of the facts of the particular case that disclosure might either subject the witnesses to possible intimidation or harrassment [sic] or harm the prospects of future cooperation between witnesses and law enforcement officers.

Open Records Decision No. 252 (1980) at 4; *see also* Open Records Decision No. 397. When the "law enforcement" exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986), citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); *see also* Open Records Decision No. 413 (1984) (Department of Corrections is a "law enforcement" agency within the meaning of section 3(a)(8)).

You have submitted to us for review 28 documents, portions of which you seek to withhold under section 3(a)(8) of the Open Records Act. You explain that release of information marked on these documents would reveal the identity of informants, department employees, inmates, and Department of Public Safety undercover narcotics investigators who were involved in the investigation. You believe that release of such information would expose these persons to harassment and retaliation. We have examined the documents submitted to us for review and agree with your contention that release of the marked information would undermine a legitimate interest of law enforcement. Accordingly, we conclude that the marked information may be withheld from required public disclosure under section 3(a)(8) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in black ink that reads "James E. Tourtelott". The signature is written in a cursive style with a large, stylized "J" and "T".

James E. Tourtelott
Assistant Attorney General
Opinion Committee

JET/GCK/jmn

Ref.: ID# 19796
ID# 20032
ID# 20189

cc: Mr. Johnny L. English
Sergeant of Correctional Officers
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